

REMARKS

In the Office Action dated April 29, 2008, claims 1-40 are pending in the application. Claims 41-48 were added to the application. Claim 13 was cancelled. Applicants respectfully request the Examiner for reconsideration of the rejections.

Rejection Under 35 U.S.C. § 103

Claims 1-3, 5-10, 12-16, 18-24, 26-31, 33-38, and 40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Zigmond et al. (U.S. Pat. 6,698,020) in view of Lu et al. (U.S. Pat. 5,771,307). Applicants respectfully traverse.

There are significant differences between Zigmond and the recitations of claim 1. Applicants agree that the Zigmond reference does not teach that the message is indicative of the viewer presence near the communication apparatus. Applicants have previously amended claim 1 to recite, "A sensor generating a viewer presence message indicative of the viewer presence near the communication apparatus." However, the last clause of claim 1 recites that the processor accesses the stored messages for display in place of the broadcast programming being currently viewed by the viewer in response to the presence message.

The claims were previously appealed and the previous rejections were affirmed in-part with a new ground of rejection. The Board seemed to indicate areas of potential patentability. The claims were amended to reflect those areas.

The Board stated on page 7 of their decision, "Claim 1 requires neither the constant attention of the viewer, nor the physical presence of the subscriber. Claim 1 recites a sensor that provides a message indicative that the subscriber is using the programming. Zigmond clearly provides for methods that allow for identity of the viewer to be determined. (Finding of Fact 5). Such login processes would have to constitute "use" of the system and use of displayed

programming. While we acknowledge that Appellants' specification, particularly paragraph [0058], recites specific methods, such as using an IR receiver, to determine the presence of a viewer, claim 1 is broader than the specific disclosure in the Specification. As such, we do not find that the Examiner erred in rejecting claim 1 as being anticipated by Zigmond." Hence, this narrow language added into claim 1 is not taught or suggested in the Zigmond reference.

The Lu reference is cited for teaching that sensors are used to make sure that the viewer presence is near the communication apparatus. Applicants agree that the Lu reference teaches an apparatus for identifying a pre-determined individual member of a television viewing audience near a device. However, the Lu reference does not teach that a processor accesses the stored audio and/or video messages for display in place of the broadcast programming being currently viewed by the viewer in response to the viewer presence message.

Consequently, each of the references fails to teach or suggest the last step of claim 1. Therefore, Applicants respectfully requests the Examiner to reconsider the rejection of claim 1 in view of the above arguments and in view of the previous decision by the Board.

Claim 14 was also amended in a similar way to Claim 1. Claim 8 is a method claim and was amended to recite, "Generating a viewer presence message indicative of a viewer presence near the communication apparatus." Therefore, Applicants respectfully request the Examiner to reconsider the rejection of claims 8 and 14 for the same grounds as claim 1.

Likewise, claims 2-3, 5-7, 9-10, 12-13, 15-24, 26-31, 33-38 and 40 are all believed to be allowable for the same reasons set forth above.

Claims 4, 11, and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Zigmond in view of Lu as applied to claim 1 above, and further in view of Applicants' admitted prior art. Applicants respectfully traverse.

Applicants respectfully submit that Applicants' admitted prior art does not teach or suggest that the processor accesses the stored audio and/or video message for display in place of the broadcast program being currently viewed by the viewer in response to the viewer presence message. Therefore, dependent claims 4, 11 and 17 are also believed to be allowable for the same reasons set forth above.

Claims 25, 32, and 39 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond in view of Lu as applied to claim 1 above, and further in view of Dimitrova et al. (U.S. Pub. No. 2003/0093784). Applicants respectfully traverse.

Claims 25, 32, and 39 all recite that the sensor comprises an RF detection circuitry. It should be noted that the RF detection circuitry is used for generating a viewer presence message indicative of the viewer presence near the communication apparatus. That is, the RF signals are used for detecting. Paragraph 32 of the Dimitrova reference teaches a sensor that may use wireless transmission to a sensor signal receiver as recited in line 6 of the first paragraph of page 4. However, there is no teaching that the sensor is an RF sensor that detects the presence of a viewer. Therefore, Applicants respectfully request the Examiner to reconsider the rejection of claims 25, 32, and 39.

CONCLUSION

In light of the remarks above, Applicants submit that all rejections are now overcome. The application is now in condition for allowance and expeditious notice thereof is earnestly solicited. Should the Examiner have any questions or comments, the Examiner is respectfully requested to contact the undersigned attorney.

Should any fees be associated with this submission, please charge Deposit Account 50-0383.

Respectfully submitted,

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By: 

Todd N. Snyder, Reg. No. 41,320
Attorney for Applicants

The DIRECTV Group, Inc.
CA/LA1/A109
2230 East Imperial Highway
El Segundo, CA 90245
Telephone: (310) 964-0560
Facsimile: (310) 964-0941